



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2004

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2004-3670

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200845.

The Bexar County Sheriff's Office (the "sheriff") received several requests from the same requestor for information concerning the Bexar County Sheriff's Communications section.

You indicate that the sheriff objects to the disclosure of a portion of the requested information, specifically:

- A list of all present dispatchers, telecommunications personnel, 911 operators or other personnel assigned on a temporary or permanent basis . . . [including] their names, dates of hire, dates of completion of the 40 Hours Telecommunicator Course as required by the Texas Commission on Law Enforcement Officer[] Standards and Education ["TCLEOSE"], the dates of the 40 hours instruction for each employee and name and credentials of the instructor who certified such training;
- A list of all present dispatchers, telecommunications personnel, 911 operators or other personnel assigned on a temporary or permanent

basis . . . date of their NCIC / TCIC certifications and level of such training (Full or Limited Access) and access training[.]

You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

Section 552.108 of the Government Code provides in pertinent part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). This office has concluded that section 552.108 protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment). However, policies and techniques that are generally known may not be withheld under section 552.108(b)(1). *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

¹ We assume the remainder of the requested information has been released to the requestor. If not, the sheriff must release it at this time. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). Additionally, with regard to the questions raised by the requestor in the request for information, we note that the Public Information Act ("Act") does not require a governmental body to answer questions. *See* Open Records Decision No. 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990).

Upon review of your arguments and the submitted information, we find you have failed to establish that release of the information would interfere with the operations or security of the sheriff's communications center. Thus, we find you have failed to establish that release of the information would interfere with law enforcement or crime prevention. *See* Gov't Code § 552.108(b)(1); Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts unless information does so on its face). We therefore determine the sheriff may not withhold the submitted information under section 552.108(b)(1).

We note, however, that the submitted documents appear to contain the social security numbers of employees of the sheriff. Social security numbers of employees who are licensed peace officers are excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts the social security number, home address and telephone number, and family member information of a "peace officer" as defined in article 2.12 of the Code of Criminal Procedure. Thus, to the extent the documents at issue contain the social security numbers of employees of the sheriff who are currently licensed peace officers, the sheriff must withhold such social security numbers pursuant to section 552.117(a)(2) of the Government Code.

Next, in the event the submitted documents contain social security numbers of employees of the sheriff who are not licensed peace officers, such social security numbers may be excepted from disclosure under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who timely requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). The determination of whether a particular item of information is excepted from disclosure under section 552.117(a)(1) must be made as of the date of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who requested confidentiality under section 552.024 for the information prior to the sheriff's receipt of the present request. Accordingly, to the extent the documents at issue contain the social security numbers of employees of the sheriff who are not licensed peace officers, but who timely requested confidentiality for their social security numbers pursuant to section 552.024, the sheriff must withhold such social security numbers under section 552.117(a)(1) of the Government Code.

We further note that, in the event the submitted documents contain social security numbers that are not excepted under sections 552.117(a)(2) or 552.117(a)(1) of the Government Code, such social security numbers may be excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. The 1990 amendments to the federal Social Security Act

make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990.

In summary, social security numbers of currently licensed peace officers in the submitted information are excepted under section 552.117(a)(2) of the Government Code. To the extent the submitted documents contain social security numbers of employees who are not peace officers, but who timely elected to keep their social security numbers confidential pursuant to section 552.024, the sheriff must withhold such social security numbers under section 552.117(a)(1) of the Government Code. In the event the submitted documents contain social security numbers that are not excepted under section 552.117, such social security numbers may be excepted under section 552.101 of the Government Code in conjunction with federal law. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 200845

Enc: Submitted documents

c: Mr. Mark S. Vojvodich
5806 Valley Forge Avenue
San Antonio, Texas 78233-5138
(w/o enclosures)